

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1730 OF 2018

1. Balkrushna Ramchandra Gavali,
Age : 68 yrs. Occu. : Agriculture
R/o. Lavul, Tal. Madha, Dist. Solapur **...Petitioner**

Versus

1. The State Of Maharashtra
Through General Administration
Department, Mantralaya, Mumbai
2. The Collector of Solapur
Collector Office, Solapur
3. The Special Acquisition Officer – 4,
(Karmala), Solapur or Sub Divisional
Officer, Kurduwadi, Tal. Madha,
Dist. Solapur
4. The Tehsildar of Madha, Tehsildar office,
Taluka Madha, District Solapur
(Through Government Pleader Officer of
High Court Appellate Side, Bombay High
Court) **...Respondents**

Mr. Pandit Kasar, for the Petitioner.

Mrs. P. N. Diwan, AGP for the State/Respondent nos.1 to 5.

**CORAM: R. M. BORDE &
N. J. JAMADAR, JJ**

DATED: 26th APRIL, 2019

ORAL JUDGMENT:- (Per R. M. BORDE, J.)

1. Rule. Rule made returnable forthwith. With the consent of the Counsel for the parties heard finally.
2. The Petitioner is an agriculturist whose landed property has been taken in possession for construction of a percolation

tank in the year 2006. The proceedings in respect of acquisition of the land were initiated with issuance of notification under Section 4 of the Land Acquisition Act on 5th February, 2004 and in observance of the procedure prescribed under the Land Acquisition Act, 1894, award came to be declared determining the amount of compensation on 17th May, 2006. According to the Petitioner, although the possession of the agricultural property has been taken over and percolation tank has already been constructed, the amount of compensation determined under the award has not been paid to the Petitioner. The Petitioner, as such, has approached this Court seeking a declaration that the proceedings of the award which have been concluded some five or more years prior to the commencement of the Right to Fair Compensation and Transparency in Land Acquisition, (Rehabilitation and Resettlement) Act, 2013, shall be deemed to have lapsed and the appropriate government if so chooses shall have to initiate the proceeding of such land acquisition afresh in accordance with the provisions of the Act of 2013.

3. Affidavit-in-reply has been presented on behalf of Respondent nos.1 to 4, wherein the factum of taking over possession of the landed property belonging to the Petitioner

has been admitted. It has also been recorded in the affidavit that though the award has been declared in the year 2006, the amount of compensation has been deposited in the PLA account on 8th January, 2015. The amended provisions incorporated by way of proviso to Section 24(2) of the Land Acquisition Act also will not help in saving the proceedings of the acquisition and the award from the consequences of lapsing as prescribed under Sub-section (2) of Section 24 of the Act. The proviso to Sub-section (2) of Section 24 of the Act incorporated by way of amendment (amending Act 37 of 2018 as applicable to the State of Maharashtra) records thus:

“Provided further that, in computing the period referred to in this sub-section, any period or periods during which the proceedings for acquisition of the land were held up on account of any stay or injunction issued by any court or the period specified in the award of a Tribunal for taking possession or such period where possession has been taken but the compensation is lying deposited in a court or in any designated account maintained for this purpose on account of refusal or not coming forward for receiving compensation despite receipt of such notice under sub-section (2) of section 12 of the Land Acquisition Act, 1894, shall be excluded. Also if the said land is mutated within three years after passing the award in the name of acquiring body, it shall be deemed that the possession of the land has been taken.”

The proviso to sub-section 2 of Section 24 recorded above does not have effect of saving the proceeding of acquisition from consequence of lapsing for the reason that the amount of compensation has admittedly been deposited in PLA account by

State only in the year 2015 although award was declared in the year 2006.

4. It is admitted position that the award has been declared in the year 2006 whereas the amount of compensation has been deposited in the PLA account in the year 2015. There is nothing on record to indicate that the Petitioner has refused to accept the amount of compensation or that any notice directing him to receive the amount of compensation within contemplation of Section 12(2) of the Act of 1894 was ever issued to him. Apart from this, mere declaration of award in the year 2006 without making payment of amount determined thereunder, cannot be construed as an award within the meaning of provisions of Land Acquisition Act, 1894. The award is an offer of amount of compensation determined by the Land Acquisition Officer and the same shall have to be paid to claimant whose property is being acquired. In the instant matter, though the award has been declared in the year 2006, the amount of compensation was not offered and the said amount is stated to have been deposited in PLA account in the year 2015 i.e. after about nine years from date of declaration of the award. In the circumstances, in view of the judgment delivered by the Division Bench of this Court in the matter of

Sriniwas Radhakishan Malani & others vs. The State of Maharashtra & ors. in Writ Petition No.4594 of 2013

(Aurangabad Bench), the award declared by the Land Acquisition Officer in the year 2006 cannot be construed to be a valid award and the proceedings of the said award shall be deemed to have lapsed on account of failure of the State to offer the amount of the compensation to the Petitioner on declaration of award. Even otherwise, in view of the provisions of Section 24(2) of the Act of 2013, the proceedings of acquisition shall be deemed to have lapsed since the amount of compensation has not been paid to the Petitioner although the award has been made prior to five years from the date of enforcement of the Act of 2013.

5. For the reasons recorded above, the Writ Petition deserves to be allowed and same is accordingly allowed.

6. The proceedings of the award impugned in the petition declared on 17th May, 2006 shall be deemed to have lapsed so far as it relates to the Petitioner and the appropriate government if it chooses, shall initiate the proceedings of such acquisition afresh in accordance with the provisions of the Act of 2013.

7. Rule is made absolute in terms as recorded above. There shall be no order as to costs.

[N. J. JAMADAR, J.]

[R. M. BORDE, J.]